

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 7
Jicarilla Apache Nation

REQUEST FOR SCHEDULING AND PROCEDURAL CONFERENCE

In compliance with *Order* of the Special Master filed April 20, 2011 (Doc. No. 10059), regarding the Jicarilla Apache Nation's outstanding state law-based water rights claims, the State of New Mexico and the Jicarilla Apache Nation, by and through their undersigned counsel, file this joint request for a scheduling and procedural conference. Further, the State of New Mexico states as follows:

1. Under the *Order* of the Special Master filed April 20, 2011 (Doc. No. 10059), the State of New Mexico (State) and the Jicarilla Apache Nation (Nation) are required to submit a request for a scheduling and procedural conference for future proceedings in the event that the parties are unable to submit a signed consent order to the Court by June 17, 2011. As of this date, the parties are unable to submit such an order to the Court. Moreover, the draft prepared by the State of the proposed consent order is still under internal review, and it is not expected that the State will be in a position to present a proposed consent order to counsel for the Nation for his own review for several more weeks. Even after the State has made its proposal to the Nation, it can be anticipated that there will

be the need for additional discussion between the parties, and time for the Nation to carefully review the State's proposals. For these reasons, the State requests that the Court not set a date for a scheduling or procedural conference at this time, and instead hold the required request for this conference in abeyance.

2. As the Court is well aware, the State of New Mexico has been preparing a proposed consent order that describes the water rights of the Jicarilla Apache Nation in Section 7 of the Rio Chama Stream System for some time. However, the issues involved are complex. The lands that will be the subject of the proposed consent order were recently acquired by the Nation, and they are now held in trust by the United States of America for the benefit of the Nation and its members. The State does not anticipate any disagreement with the Nation on the technical description of the elements of its claimed water rights; that is, the amount or location of any irrigated acreage or other technical information concerning stockwatering uses or wells. However, the proposed consent order also addresses the administration of the water rights on these lands following the judicial recognition of those rights. These are matters that were addressed in the decree entered on April 6, 1998, that described the water rights of the Nation within the boundaries of the Jicarilla Apache Reservation as of September 13, 1988, *see generally Partial Final Judgment and Decree of the Jicarilla Apache Tribe* filed April 6, 1998 (Docket No. 5797), and these matters should also be addressed in the present consent order that will resolve the remaining claims of the Nation. Due to the importance of these issues to both the State and the Nation, the proposed consent order is being carefully reviewed by both the attorneys for the State and the professional staff of the Office of State Engineer, and these persons have not yet completed that review.

3. For the reasons discussed above, the State does not believe that a scheduling and procedural conference with the Court at this time would assist the parties or expedite the process. The

State suggests that the parties instead submit a Status Report to the Court detailing their progress, as may be requested by the Court.

Respectfully Submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2011, I filed the foregoing electronically through the CM/ECF system, which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Ed Newville
Edward G. Newville